It is apparent therefore that the proceedings in this case have been completely irregular from the start and it is not possible at this stage to remedy the defect. As it is not possible to make an order which can be enforced the judgment of the High Court and that of the Magistrate's Court are set aside. Each side will bear his own costs throughout these proceedings and the deposit will be paid out to the appellant.

Murray-Aynsley, C.J. (S.) : — This litigation has been unfortunate. The respondent was sued in the Sessions Court for rent. He claimed to set off money spent by agreement on repairs. The President found that there was no agreement to this effect and in consequence awarded the plaintiff what was due for rent. The respondent appealed to the Supreme Court and the learned Judge allowed the appeal. He did not appear to upset the finding of fact of the President and on the documents he would have clearly been wrong if he had done so. How in the absence of agreement he found the landlord liable to repairs is not clear.

The respondent in his grounds of appeal referred to a case (*M. M. Ally & Co. v. Chellammah*[1]) but in that case there was an admitted liability of the landlord to repair.

In the ordinary way the appeal would be allowed and judgment entered for the plaintiff for the sum awarded by the President. But this calls attention to the extraordinary way in which these proceedings have been taken. The plaintiff, now the appellant, has been described as the Trustee of the Chettiar Temple, Sentul. We do not know who he is but it seems probable that in any event he is not the same person as he who started the proceedings. He is not a corporation sole and it would be impossible to make out a money judgment in that form. I am afraid that the whole of the proceedings have been irregular and must be set aside, leaving the proper plaintiff to start again if he so wishes. As the point was not raised by the respondent at any stage, I think there should be no order for costs on this appeal or in either of the Court's below. Deposit to appellant.

Taylor, J. : — This is an appeal from a Judgment of the High Court varying a decision of the Magistrate's Court in a suit for arrears of rent.

The landlords are the trustees of a temple. They let one of their out-buildings to a carpenter, and disputes arose both about rent and repairs. The general inference from the evidence is that both parties had been unbusiness-like, and it is virtually impossible to prove clearly what contract was really made and what variations, if any, were ever effectively agreed. The matter was allowed to drift.

Eventually an action was started in the name of "Trustee of Chettiar Temple" as plaintiff. This is irregular, and it is a material irregularity because the trustees change from time to time. The temple is not incorporated, nor the trustees a body so constituted as to have succession or to sue in a corporate name. There have in fact been changes in the person responsible for this present litigation during its course, and as the proceedings stand it is impossible to make an order which would be effective. I think that the whole proceedings were defective because the parties to the original action were not properly cited, and that it is too late to rectify the matter now. In any event, no application for amendment or substitution was ever made. In these circumstances I think the only possible order is that both the judgments below be set aside and that both parties pay their own costs throughout.

Order accordingly.

Solicitors for the appellant : *Lovelace & Hastings.*

IBRAHIM BIN SAIDIN & ANOR. v. HITAM BIN ALI.

[O. C. J. (Wilson, J.) November 12, 1953]

[K.L. — Civil Suit No. 173 of 1952]

Land laws — Agreement to sell — Compulsory acquisition during Japanese occupation — Acceptance of compensation by the purchaser from the Japanese — Re-transfer of the land to original owner — Vendor's agreement to pay $3,000 in default of transfer — Specific performance — The Essential (Trading with the Enemy) (Custodian) (General Vesting) Regulations, 1951.

By an agreement dated the 14th February 1944, in consideration of the sum of $1,500 the defendant agreed to sell two pieces of land in the District of Klang to the plaintiffs. During the course of the Japanese occupation the land was in some way or another compulsorily acquired by the Japanese and handed over to a Japanese firm. For this compulsory acquisition compensation was payable to the owner. As the defendant was the registered owner the compensation was paid to the attorney of the defendant who paid the same to the plaintiffs. After the reoccupation of Malaya and as a result of the defendant paying the equivalent in re-valued money of the compensation paid for the compulsory acquisition of the land to the Custodian of Enemy Property, the land was re-transferred to the defendant. It was argued at the hearing that any rights which the plaintiffs may have had against the defendant were extinguished when the plaintiffs accepted compensation from the Japanese. It was further argued that assuming the agreement is genuine, which the defendant denied, the plaintiffs' only remedy was to claim the $3,000.

Held: (1) under the Essential Regulations, the legal position in regard to the lands reverted, after the Japanese occupation had finished, to the position which existed before the compulsory acquisition by the Japanese subject to temporary vesting in the Custodian. The transfer of the lands back to the registered owner was subject to any encumbrances which existed before the compulsory acquisition by the Japanese; (2) there is no authority to show that where there is provision in an agreement that the Vendor will pay to the purchaser certain amount of damages in the event of a failure

to carry out the terms of the agreement the purchaser of the property is precluded from claiming specific performance.

ACTION for specific performance.

Thomas for the plaintiffs.

J. S. H. Skrine for the defendant.

Cur. Adv. Vult.

Wilson, J. : — The plaintiffs by their statement of plaint claim to be landowners and to reside at Klang and Port Swettenham. The defendant in his statement of defence says he has no knowledge of this and does not know them. I do not believe him. The plaintiffs allege that by an agreement dated the 14th February, 1944, in consideration of the sum of $1,500, the defendant agreed to sell two pieces of land in the District of Klang to the plaintiffs. The defendant admits that it is his right-hand thumb impression which appears on the agreement. He says that he does not remember putting his thumb impression on the document, and he says it was never his intention to sell the land to the plaintiffs, and he further says that he never received any money from the plaintiffs. I do not believe the defendant when he says he received no money and when he says that he must have put his thumb impression on the agreement in the belief that it was a document of a different sort. The defendant admittedly owned lands in Klang and lived there, and he was there when the Japanese came and occupied the territory. The defendant alleges that he went to Kelantan in or about the year 1942. I am satisfied on the evidence that he did not go to Kelantan until 1944, after he had put his thumb print on the agreement dated the 14th February, 1944. That is the evidence of Ibrahim bin Saidin and the evidence of Abdul Hamid bin Haji Daud who was, I am satisfied, the attorney of the defendant. The defendant admits that his right-hand thumb impression appears on a power of attorney by which Abdul Hamid was appointed attorney for the defendant. I am satisfied that the defendant appointed Abdul Hamid as his attorney and knew quite well the terms of the document. I find that as from the 14th February, 1944 the first plaintiff went into possession of the land in dispute.

During the course of the Japanese occupation the land was in some way or another compulsorily acquired by the Japanese and handed over to a Japanese firm. For this compulsory acquisition compensation was payable to the owner of the land. The registered owner of the land at the time was the defendant but his attorney, knowing of the agreement of sale to the plaintiffs, considered that the compensation should be paid to the plaintiffs. As the defendant was the registered holder of the title the Japanese were not prepared to do this and they paid the money to Abdul Hamid as attorney of the defendant. Abdul Hamid, under his power of attorney and being well aware of the agreement dated the 14th February 1944, paid this compensation to the plaintiffs.

After the Japanese occupation had ended the defendant returned to Klang and he wrote a letter to the then Custodian of Enemy Property, in whom the land had vested by reason of the Essential (Trading with the Enemy) (Custodian) (General Vesting) Regulations, 1951, and as a result of his paying the equivalent in re-valued money of the compensation paid for the compulsory acquisition of the land, the land was re-transferred to him.

It has been argued that any rights which the plaintiffs may have had against the defendant were extinguished when the plaintiffs accepted compensation from the Japanese.

I cannot agree with this because, in my opinion, under the Essential Regulations quoted above, the legal position in regard to the lands reverted, after the Japanese occupation had finished, to the position which existed before the compulsory acquisition by the Japanese subject to temporary vesting in the Custodian. In my opinion, the transfer of the lands back to the registered owner was subject to any encumbrances which existed before the compulsory acquisition by the Japanese.

Under the agreement it is provided that in the event of the failure of the defendant to transfer the lands in favour of the plaintiffs, the defendant agreed to pay the $3,000 to the plaintiffs. It has been argued that, assuming the agreement is genuine, the plaintiffs' only remedy is to claim the $3,000. The provision in the agreement referred to is one which is familiar to me and is one which is included in many similar agreements in this country. No authority has been quoted to me to show that where such a provision appears in an agreement the purchasers of property are precluded from claiming specific performance. In my opinion the provision does not preclude a purchaser from claiming specific performance and is only intended to fix the damages which can be claimed if specific performance is not claimed in the event of a failure to carry out the terms of the agreement. I give judgment for the plaintiffs as prayed.

The defendant has counterclaimed for the sum of $343, the amount paid by him to the Custodian, in the event of the plaintiffs succeeding in their claim. In my opinion, the defendant, having paid this sum to the Custodian in order to get re-possession of the land in circumstances which made the transaction fraudulent, cannot recover this sum from the plaintiffs. The counterclaim is dismissed with costs.

Judgment for the plaintiffs.

Solicitors for the plaintiffs :

Solicitors for the defendant : *Bannon & Bailey.*

Re M. A. ABDUL MAJEED.

[O. C. J. (Brown, Ag. C.J.) November 13, 1953]

[Singapore — Bankruptcy No. 36 of 1952]

Bankruptcy — Adjournment of hearing — Bankruptcy Rule 126 — Effect of non-compliance with Rule 126.

This was a bankrupt's motion to annul the Receiving and Adjudication Orders made against him on the ground that in adjourning the petition sine die Rule 126 was infringed. The petition was adjourned sine die in compliance with a joint request made by the bankrupt and the petitioning creditor, or a request by one of them with the concurrence of the other.

Rule 126 of the Bankruptcy Rules reads as follows:—

"After the expiration of one month from the day appointed for the first hearing of a petition (provided such petition shall have been duly served) no further adjournment of the hearing merely by consent of the parties shall be allowed except for the reasons set forth in Rule 119 of these Rules or for such other sufficient reason to be stated in the order for adjournment as the Court thinks fit; but in every such case unless an order for adjournment is made the Court shall either make a receiving order or dismiss such appointment."

When the petition was restored to the list the bankrupt himself did not receive notice of it.

Held: the bankrupt himself contributed to the infringement of Rule 126.

BANKRUPTCY.

P. F. X. Leonard for the bankrupt.

A. P. Godwin for the petitioning creditor.

Cur. Adv. Vult.

Brown, Ag. C.J. : — This was a bankrupt's motion to annul the Receiving and Adjudication Orders which were made against him on 2nd October 1953. The only point of substance, in my opinion, was that in adjourning the petition *sine die* on the 25th July 1952 Rule 126 was infringed, and that when the petition was restored to the list he himself received no notice of it. This case seems to emphasize the importance of Rule 126, and I thought it right to take time to consider the effect of non-compliance with that Rule.

In considering the exercise of my discretion to annul the Receiving and Adjudication Orders the following factors seem to me important:—

(1) The bankrupt himself contributed to the infringement of Rule 126. It was in compliance with a joint request made by him and the petitioning creditor, or a request by one of them with the concurrence of the other, that the petition was adjourned *sine die*.

(2) If Rule 126 had been drawn to the Court's attention it is certain that the Court would not have dismissed the petition. It would either have made a receiving order then, or if it had ordered an adjournment it would have stated in the order the reasons for it.

(3) When the petition was reinstated the petitioning creditor's solicitors notified the bankrupt's solicitors. The latter replied that they had no instructions. It seems to me that the bankrupt was to blame for the receiving order being made in his absence because with an adjourned petition pending he left no instructions with his solicitors and took no other step to see that he was informed of its reinstatement.

(4) His only disclosed assets are the three actions for $3,294.31 each. These assets are problematical; and his debt to the petitioning creditor alone is over $13,000.

(5) If he had attended on the 2nd of October 1953 it seems to me that there is nothing in his affidavit which would have caused the Court to dismiss the petition, and the Court would have adjudged him bankrupt. If that is so, there is no reason to annul the receiving and adjudication orders now.

There will be no order.

No order.

Solicitors for the bankrupt: *Sisson & Delay.*

Solicitors for the petitioning creditor: *Donaldson & Burkinshaw.*

YIM YIP KAE & ANOR. v. KWONG HOCK CHEONG SAWMILL & CO., LTD.

[O. C. J. (Aitken, Ag. J.A.) August 8, 1941]

[Singapore — Suit No. 36 of 1941]

Land laws — Ownership of land encroached by tidal water — Acquisition of foreshore by prescription — Easement — Presumption of lost grant in spite of Registration of Deeds Ordinance — Rights of riparian owners to tidal waterways.

The plaintiffs claimed to be the owners of the whole of the area known as Lot 171 situated at Kallang. This lot was granted to their first predecessor in title in 1858 and the whole lot must then have consisted of dry land. By gradual and imperceptible encroachment of the tidal water, the lot had been reduced to its present condition of river bed, foreshore and dry land — the dry land being less than a fourth of the total area. The plaintiffs bought over the lot in 1933 and when they went into occupation they found the defendants and 2 other Sawmills were using those parts of the lot which consisted of waterways for the purpose of conveying logs to their wharves and also those parts which were covered with water at high tide but left uncovered at low tide for the purpose of storing their logs.

The defendants claimed that they had become owners by prescription of those parts whereon they deposited their logs for storage by reason of adverse possession.